

vs.

Defendant.

§ § § § § § § § § §

Cause No. 2020-DCV\_\_\_\_\_

## 1

overnight stocker by Defendant. In the course and scope of his employment, under the supervision of Defendant, Plaintiff sustained an on-the-job injury to his finger and other parts of his body on or about October 21, 2019. Plaintiff had physical restrictions but could still do his job as an overnight stocker.

On or about November 6, 2019 Plaintiff had a medical emergency in which Plaintiff's cyst on his lower back popped causing blood and puss to run down Plaintiff's pant leg. When Plaintiff notified management of his medical emergency, he was told to finish his shift. Plaintiff request an accommodation from Defendant for is injury to his finger as well as his medical emergency but was denied any type of accommodation.

On or about November 26, 2019 Plaintiff required surgery for a pilonidal cyst excision due to his medical emergency. Due to his surgery Plaintiff was hospitalized through November 30, 2020. Plaintiff was discharged from the hospital with a wound VAC. Plaintiff was taken out of work due to his medical emergency was due to return to work on or about December 21, 2019.

Plaintiff provided his discharge paperwork and medical note to his employer on or about December 7, 2019. When Plaintiff provided his medical documents to his Manager his manger notified Plaintiff that that he was terminated due to Plaintiff not leaving the hospital to go to work.

The aforementioned acts by Defendant constitute unlawful discrimination against Plaintiff in violation of Tex. Labor Code Sects. 21.051 and 21.105.

#### **IV.**

#### **ADMINISTRATIVE PROCEDURES**

Plaintiff ANDRES CASTANEDA has timely filed a charge of disability discrimination on January 24, 2020 with the Equal Employment Opportunity Commission ("EEOC") and the Texas

Workforce Commission Civil Rights Division within 180 days of the act or occurrence, thereby satisfying all administrative requirements for filing this suit. Plaintiff has obtained a Right to Sue notice dated April 21, 2020 from the U.S. Equal Employment Opportunity Commission which was deemed dual-filed with the Texas Commission on Human Rights and satisfied all administrative requirements for filing this suit.

**V.**

**CLAIMS FOR RELIEF**

**Claims for Disability Discrimination and Unlawful Employment Practices under State Law.**

The aforementioned acts of Defendant, through the acts of its officers, managers, agents, and employees, constitute unlawful discrimination and a hostile work environment against Plaintiff based on his disability, in violation of the Texas Labor Code Sections 21.051 and 21.105.

Each of which acts or omissions by Defendant was other than what a reasonable and prudent person would have been doing under the same or similar circumstances. Each of which acts or omissions was a proximate cause of the injuries and damages sustained by Plaintiff, as further described below.

As a result of Plaintiff being in the employ of Defendant, Plaintiff has lost wages. Plaintiff has also lost employment benefits. Plaintiff has suffered mental anguish and emotional distress in the past and will continue to suffer mental anguish and emotional distress in the future. Plaintiff has suffered damage to her credit reputation and will continue to suffer damage to her credit reputation. Plaintiff is entitled to recover these sums as damages.

Plaintiff would show that Defendant acted with malice. Specifically, Defendant had a specific intent to cause substantial injury to Plaintiff when it discriminated against Plaintiff.

Defendant's actions were in willful disregard of the rights of Plaintiff for which Plaintiff entitled to recover punitive damages.

**VI.**

**DAMAGES**

Plaintiff would show that Defendant acted with malice. Specifically, Defendant had a specific intent to cause substantial injury to the Plaintiff when Defendant's terminated and discriminated against Plaintiff in violation of disability discrimination Texas Labor Code Sections 21.051 and 21.105, disability discrimination Defendant's actions was in willful disregard of the rights of Plaintiff for which Plaintiff is entitled to recover punitive damages, Pursuant to TRCP 47. Plaintiff is seeking monetary relief over \$200,000.00 but no more than \$1,000,000.00.

**VII.**

**ATTORNEY'S FEES**

Plaintiff seeks attorney's fees to the extent she is the prevailing party.

**VIII.**

**JURY DEMAND**

Plaintiff respectfully requests trial by jury of the issues in this case.

**XI. REQUESTS FOR DISCLOSURE**

Pursuant to Rule 194, Defendant are requested to disclose within the time period set forth in Tex. R. Civ. P. 194.3 the information or material described in Rule 194.2(a) - 194.2(l).

**IX.**

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer, and that upon final hearing she obtain judgment providing her with all compensatory damages sought herein, punitive damages, pre-judgment interest, post-judgment

interest, attorney's fees, costs of court, and such other relief to which Plaintiff may show herself justly entitled, under law and/or equity.

Respectfully submitted,

**SCHERR & LEGATE, PLLC**

Attorneys for Plaintiff

109 N. Oregon, 12<sup>th</sup> Floor

El Paso, Texas 79901

(915) 544-0100 voice

(915) 532-1759 facsimile

/s/Oscar Mendez Jr.

**OSCAR MENDEZ JR.**

State Bar No. 24058473

THH  
PSC11703  
6-2-20

**THE STATE OF TEXAS**

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **WAL-MART STORES TEXAS, LLC**, who may be served with process by serving its registered agent, **CT CORPORATION SYSTEM**, at **1999 BRYAN ST., SUITE 900, DALLAS, TX 75201** or wherever he/she may be found

Greetings:

You are hereby commanded to appear by filing a written answer to the **Plaintiff's Original Petition** at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **County Court at Law Number 6**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on this the 27<sup>th</sup> day of May, 2020, by Attorney at Law, **OSCAR MENDEZ, JR.**, 109 N OREGON 12TH FLOOR EL PASO TX 79901 in this case numbered **2020DCV1798** on the docket of said court, and styled:

**ANDRES CASTANEDA**  
**VS**  
**WAL-MART STORES TEXAS, LLC**

The nature of Plaintiff's demand is fully shown by a true and correct copy of the **Plaintiff's Original Petition, Plaintiff's First Request for Production of Documents and Things to Defendant and Privilege Log, Plaintiff's First Set of Interrogatories to Defendant and Privilege Log, Jury Request** accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 1<sup>st</sup> day of June, 2020

CLERK OF THE COURT

**NORMA FAVELA BARCELEAU**  
District Clerk  
El Paso County Courthouse  
500 E. San Antonio Ave, RM 103  
El Paso, Texas 79901



Attest: NORMA FAVELA BARCELEAU District Clerk  
El Paso County, Texas

By Stephanie V. Aguilar, Deputy  
Stephanie V. Aguilar

Rule 106: "the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

CTH 6-2-2020  
@ 8:09 AM

**RETURN**

Came on hand on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M., and executed in \_\_\_\_\_ County, Texas, by delivering to each of the within-named defendants, in person, a true copy of this Citation, having first endorsed thereon the date of delivery, together with the accompanying true and correct copy of the **Plaintiff's Original Petition, Plaintiff's First Request for Production of Documents and Things to Defendant and Privilege Log, Plaintiff's First Set of Interrogatories to Defendant and Privilege Log, Jury Request**, at the following times and places, to-wit:

NAME	MONTH	DATE DAY	YEAR	Hour	TIME Min. ____M.	Place, and Course and Distance From Court House

And not executed as to the defendant, \_\_\_\_\_

The diligence used in finding said defendant, being \_\_\_\_\_

And the cause of failure to execute this process is: \_\_\_\_\_

And the information received as to the whereabouts of the said defendant, being \_\_\_\_\_

FEES—SERVING \_\_\_\_ copy \_\_\_\_ \$ \_\_\_\_\_ Sheriff

\_\_\_\_\_ County, Texas

Total \_\_\_\_\_ \$ \_\_\_\_\_ by \_\_\_\_\_, Deputy

**CERTIFICATE OF DELIVERY**

I do hereby certify that I delivered to \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m. this copy of this instrument.

\_\_\_\_\_, Sheriff/Agent

\_\_\_\_\_, County, Texas

By \_\_\_\_\_, Deputy/Agent

**SUBSCRIBED AND SWORN TO BEFORE ME ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.**

**(SEAL)**

\_\_\_\_\_  
**NOTARY PUBLIC, STATE OF TEXAS**

IN THE COUNTY COURT AT LAW 6  
EL PASO COUNTY, TEXAS

ANDRES CASTANEDA	§	
	§	
Plaintiff,	§	
	§	Cause No. 2020-DCV-1798
v.	§	
	§	
WAL-MART STORES TEXAS, LLC.	§	
	§	
Defendant.	§	

DEFENDANT’S ORIGINAL ANSWER

Defendant Wal-Mart Stores Texas, LLC answers Plaintiff’s Original Petition as follows:

GENERAL DENIAL

- Defendant denies all allegations in Plaintiff’s Original Petition.
- Defendant reserves the right to supplement or amend this Answer as appropriate.

AFFIRMATIVE DEFENSES

- Plaintiff’s Original Petition fails to state a claim upon which relief can be granted.
- Plaintiff cannot recover back pay or front wages, if any, for any period of time when Plaintiff was physically unable to work.
- Plaintiff’s claims for damages are subject to the statutory caps set forth in Chapter 41 of the Texas Civil Practices and Remedies Code.
- Plaintiff’s claims for damages are subject to the caps set forth in Chapter 21 of the Texas Labor Code.
- To the extent that Plaintiff seeks to recover for claims not raised in an underlying charge of discrimination or claims not timely filed in his charge, Plaintiff’s claims are barred.
- Plaintiff has failed to exhaust his administrative remedies.



9. Plaintiff has failed to mitigate his damages.

10. Defendant engaged in good faith and reasonable efforts to prevent and promptly correct any harassing or discriminatory behavior, if any, and Plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities provided by Defendant.

11. The Court lacks jurisdiction over some or all of Plaintiff's claims.

12. All employment decisions made and actions taken regarding Plaintiff were based on legitimate, nondiscriminatory reasons.

13. Plaintiff's damages are subject to offset by interim earnings, workers' compensation benefits, or unemployment compensation received.

14. To the extent that Plaintiff may be able to prove that an improper motive was a factor in any relevant employment decision at issue in this case, the same employment decision would have been made regardless of any improper motive.

15. Plaintiff's claims are barred by the applicable statute of limitations.

Accordingly, Defendant requests that Plaintiff take nothing by this action and that Defendant receive all relief to which it is entitled.

Respectfully submitted,

KEMP SMITH LLP  
P.O. Box 2800  
El Paso, Texas 79999-2800  
915.533.4424  
915.546.5360 (FAX)

By: /s/ Clara B. Burns

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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the attorney for Plaintiff, Oscar Mendez, Jr., Scherr & Legate, PLLC, 109 N. Oregon St., 12th Floor, El Paso, Texas, 79901, on the 29th day of June, 2020.

- ☐ Regular Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☒ Electronic Transmission: [OMendez@ScherrLegate.com](mailto:OMendez@ScherrLegate.com)
- ☐ Facsimile Transmission: (915) 532-1759

/s/ Jose A. Gonzalez  
JOSE A. GONZALEZ